

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Authorize Release of the Maintenance Agreement and Irrevocable Standby Letter of Credit for The Trails 2B

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord

CONTACT: Jim Potter

EXT: 7323

MOTION/RECOMMENDATION:

Authorize the release of The Trails 2B Maintenance Agreement and Irrevocable Standby Letter of Credit #3077098 in the amount of \$117,951.81 for The Trails 2B road, drainage, wall and landscape improvements.

District 1 Bob Dallari

Jim Potter

BACKGROUND:

The Maintenance Agreement and Irrevocable Standby Letter of Credit #3077098 for \$117,951.81 (Bank of America) were required by Section 35.44 (e) *Additional Required Legal Submittals* (1) *Bonds* of the Seminole County Land Development Code to insure operating conditions have not significantly degraded as a result of the work covered by The Trails 2B Maintenance Agreement and Irrevocable Standby Letter of Credit. A two year maintenance inspection was conducted by staff for this project and it was determined to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends the Board authorize the release of The Trails 2B Maintenance Agreement and Irrevocable Standby Letter of Credit #3077098 in the amount of \$117,951.81 for The Trails 2B roads, drainage, wall and landscape improvements.

ATTACHMENTS:

1. Maintenance Agreement - The Trails 2B
2. Irrevocable Standby Letter of Credit

Additionally Reviewed By:

☒ County Attorney Review (Kathleen Furey-Tran)

MAINTENANCE AGREEMENT
(Road, Drainage, Wall and Landscape Improvements)

THIS AGREEMENT is made and entered into this **12th day of September, 2005** between **MARONDA HOMES, INC. OF FLORIDA**, hereinafter referred to as **DEVELOPER**, Developer of **TRAILS – UNIT 2B** subdivision and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as “**COUNTY**.”

WITNESSETH:

WHEREAS, **DEVELOPER** has constructed certain road, drainage, wall and landscape improvements including streets, curbs, storm drains and other appurtenances in that certain subdivision described as **TRAILS – UNIT 2B**, a Plat of which is recorded in **Plat Book 67 Pages 91 - 93**, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road, drainage, wall and landscape improvements were made pursuant to certain plans and specifications dated **November 9, 2004**, (as subsequently revised or amended) and filed with the County Engineer of Seminole County; and

WHEREAS, **DEVELOPER** is obligated to protect the **COUNTY** against any defects resulting from faulty materials or workmanship of said road, drainage, wall and landscape improvements and to maintain said road, drainage, wall and landscape improvements for a period of two (2) years from **September 12, 2005** and

WHEREAS, to guarantee performance of said obligations by **DEVELOPER**, **DEVELOPER** has obtained and furnished to the **COUNTY**, a certain Irrevocable Letter of Credit No. **3077098** issued by **BANK OF AMERICA**, in the sum of **One Hundred Seventeen Thousand Nine Hundred Fifty-One Dollars and 81/100 DOLLARS (\$ 117, 951.81)**.

NOW THEREFORE, the **COUNTY** agrees to accept the road improvements into the County Road System upon execution of this Agreement and to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the **DEVELOPER**.

DEVELOPER, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the **COUNTY** in the sum of **One Hundred Seventeen Thousand Nine Hundred Fifty-One and 81/100 Dollars (\$ 117,951.81)** on the condition that if **DEVELOPER** shall promptly and faithfully protect the **COUNTY** against any defects resulting from faulty materials or workmanship of the aforesaid road improvements, drainage, walls and landscaping and maintain road improvements, drainage, walls and landscaping for a period of two(2) years from **September 12, 2005** then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the **DEVELOPER** in writing of any defect for which the **DEVELOPER** is responsible and shall specify in said notice a reasonable period of time within which **DEVELOPER** shall have to correct said defect.

Should the **DEVELOPER** fail or refuse to perform or correct aid defects within the time specified, the **COUNTY** shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost thereof, including, but not limited to, engineering, legal an contingent costs. Further, the **COUNTY**, in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the **DEVELOPER**, both at law and in equity, including specifically, specific performance, to which the **DEVELOPER** unconditionally agrees.

The DEVELOPER further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the DEVELOPER shall fail or refuse to do so, and, in the event the COUNTY should exercise and give effect to such right, the DEVELOPER shall be obligated hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the DEVELOPER to correct said defects.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

THIS AGREEMENT, signed and sealed the day and year above written.

ATTEST:

Witness:

(Signature)

Denise C. Nicolai

(Printed Name)

(Signature)

TOMMY JORDAN

(Printed Name)

MARONDA HOMES, INC. OF FLORIDA

Florida Corporation

(Signature)

Mark D. Falck, Vice President

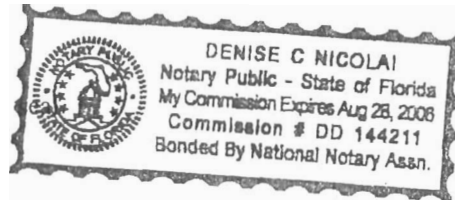
STATE OF FLORIDA

COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 12 day of Sept 2005 by Mark D. Falck, who is the Vice President of Maronda Homes, Inc. of Florida, a Florida Corporation, on behalf of said corporation. He ☒ is personally known to me or ☐ has produced a valid driver's license as identification.

Signature of Notary

Printed Name: Denise C. Nicolai



ACCEPTANCE BY SEMINOLE COUNTY:

PLANNING & DEVELOPMENT DEPT.
DEVELOPMENT REVIEW DIVISION
SEMINOLE COUNTY, FLORIDA

By:

Title:

Date:

STATE OF FLORIDA

COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 18th day of January, 2006, By Marionel Nicolai on behalf of Seminole County. He/she ☒ is personally known to Me or ☐ has produced a valid driver's license as identification.

Signature of Notary

Printed Name: Barbara J. Harbin

seal



PAGE: 1

DATE: SEPTEMBER 7, 2005

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3077098

BENEFICIARY
SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET

APPLICANT
MARONDA HOMES, INC. OF FLORIDA
3993 WEST FIRST STREET
SANFORD, FL 32771

AMOUNT
USD 117,951.81
ONE HUNDRED SEVENTEEN THOUSAND NINE
HUNDRED FIFTY ONE AND 81/100'S US
DOLLARS

EXPIRATION
SEPTEMBER 12, 2007 IN WINTER PARK,
FLORIDA

RE: THE TRAILS - PHASE 2B

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3077098, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$117,951.81 (ONE HUNDRED SEVENTEEN THOUSAND NINE HUNDRED FIFTY ONE AND 81/100'S US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE MAINTENANCE BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE SEPTEMBER 12, 2007 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3077098 OF BANK OF AMERICA, N.A. DATED SEPTEMBER 7, 2005 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST 45 DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR SUCH AN ADDITIONAL PERIOD. UPON RECEIPT OF SUCH NOTICE YOU MAY DRAW HEREUNDER BY PRESENTATION OF YOUR DRAFT AND SIGNED STATEMENT STATING "THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE MAINTENANCE AGREEMENT WITH MARONDA HOMES, INC. OF

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THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3077098

FLORIDA."

WE HEREBY ENGAGE WITH YOUR THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED. PAYMENT UNDER THIS LETTER OF CREDIT WILL BE EFFECTED UPON PRESENTATION OF YOUR DRAFT ACCOMPANIED BY THE REQUIRED DOCUMENT(S) (THE "DRAWING") TO BANK OF AMERICA N.A., 250 SOUTH PARK AVENUE, SUITE 400, WINTER PARK, FLORIDA 32789, ATTENTION: BRENDA J. KASTEN AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO FAX NUMBER (213) 345-6694.

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEYS' FEES, IF THE BENEFICIARY PREVAILS, BUT THE BANK OF AMERICA, N.A. SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE MAINTENANCE AGREEMENT.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-5304.



AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 2 PAGE(S).

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